

Office of Federal Contract Compliance Programs

§ 60-250.5

Programs may direct to enforce such provisions, including action for noncompliance.

[43 FR 49268, Oct. 20, 1978; 43 FR 51402, Nov. 3, 1978; 60 FR 1987, Jan. 5, 1995; 61 FR 6117, Feb. 16, 1996]

EDITORIAL NOTE: At 47 FR 4258, Jan. 29, 1982, the effectiveness of paragraph (d) of § 60-250.4 was suspended. This suspension will remain in effect until the Department of Labor takes final action on the proposal to amend 41 CFR 60-250, published at 45 FR 86260, Dec. 30, 1980.

§ 60-250.5 Applicability of the affirmative action program requirement.

(a) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract of \$50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in accordance with § 60-250.6 of this part. This program may be integrated into or kept separate from other affirmative action programs of the contractor. Contractors presently holding Government contracts shall update their affirmative action programs within 120 days of the effective date of this part.

(b) The affirmative action program shall be reviewed and updated annually. If there are any significant changes in procedures, rights or benefits as a result of the annual updating, those changes shall be communicated to employees and applicants for employment.

(c) The full affirmative action program shall be available for inspection to any employee or applicant for employment upon request. The location and hours during which the program may be obtained shall be posted at each facility.

(d) *Invitation to self-identify.* (1) Except as provided in paragraphs (d) (2) and (3) of this section, the contractor shall, after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, invite the applicant to inform the contractor whether the applicant believes that he or she may be covered by the Act and wishes to benefit under the affirmative action program.

(2) The contractor may invite disabled veterans to self-identify prior to making a job offer only when:

(i) The invitation is made when the contractor actually is undertaking affirmative action for disabled veterans at the pre-offer stage; or

(ii) The invitation is made pursuant to a Federal, state or local law requiring affirmative action for disabled veterans.

(3) The contractor may invite veterans of the Vietnam era to self-identify prior to making a job offer only when:

(i) The invitation is made when the contractor actually is undertaking affirmative action for veterans of the Vietnam era at the pre-offer stage; or

(ii) The invitation is made pursuant to a Federal, state or local law requiring affirmative action for veterans of the Vietnam era.

(4) The invitation referenced in paragraphs (d)(1) through (3) of this section shall state that a request to benefit under the affirmative action program may be made immediately and/or at any time in the future. The invitation also shall summarize the relevant portions of the Act and the contractor's affirmative action program. Furthermore, the invitation shall state that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will not be used in a manner inconsistent with the Act. If an applicant so identifies himself or herself, the contractor should also seek the advice of the applicant regarding proper placement and appropriate accommodation, after a job offer has been extended. The contractor also may make such inquiries to the extent they are consistent with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, (e.g., in the context of asking applicants to describe or demonstrate how they would perform the job). The contractor shall maintain a separate file on persons who have self-identified and provide that file to OFCCP upon request. This information may be used only in accordance with this part. (An acceptable form for such an invitation is set forth in Appendix A of this part. Because a contractor usually may not seek advice

from an applicant regarding placement and accommodation until after a job offer has been extended, the invitation set forth in Appendix A of this part contains instructions regarding modifications to be made if it is used at the pre-offer stage.)

(5) Nothing in this section shall relieve the contractor of its obligation to take affirmative action with respect to those applicants or employees who are known to the contractor be disabled veterans or veterans of the Vietnam era.

(6) Nothing in this section shall relieve the contractor from liability for discrimination under the Act.

[43 FR 49268, Oct. 20, 1978; 43 FR 51402, Nov. 3, 1978, as amended at 61 FR 19369, May 1, 1996]

§ 60-250.6 Affirmative action policy, practices and procedures.

(a) *General requirements.* Under the affirmative action obligation imposed by the Vietnam Era Veterans Readjustment Assistance Act of 1974, contractors are required to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era at all levels of employment, including the executive level. Such action shall apply to all employment practices, including, but not limited to, the following: hiring, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship and on-the-job training programs under 38 U.S.C. 1787.

(b) *Proper consideration of qualifications.* Contractors shall review their personnel processes to determine whether their present procedures assure careful, thorough and systematic consideration of the job qualifications of known disabled veteran applicants and Vietnam era veteran applicants for job vacancies filled either by hiring or promotion, and for all training opportunities offered or available. In determining the qualifications of a covered veteran, the contractor shall consider only that portion of the military record, including discharge papers, relevant to the specific job qualifications for which the veteran is being considered. To the extent that it is necessary

to modify their personnel procedures, contractors shall include the development of new procedures for this purpose in their affirmative action program required under this part. These procedures must be designed so as to facilitate a review of the implementation of this requirement by the contractor or the Government. (The appendix attached is an example of an appropriate set of procedures. The procedures in appendix B are not required and contractors may develop other procedures which are appropriate to their circumstances.)

(c) *Physical and mental qualifications.*

(1) The contractor shall provide in its affirmative action program, and shall adhere to, a schedule for the review of all physical or mental job qualification requirements to insure that, to the extent qualification requirements tend to screen out qualified disabled veterans, they are job related and are consistent with business necessity and the safe performance of the job.

(2) Whenever a contractor applies physical or mental job qualification requirements in the selection of applicants or employees for employment or other change in employment status such as promotion, demotion, or training, to the extent that qualification requirements tend to screen out qualified disabled veterans, the requirements shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and the safe performance of the job. The contractor shall have the burden to demonstrate that it has complied with the requirements of this paragraph.

(3) Nothing in this section shall prohibit a contractor from conducting a comprehensive medical examination prior to employment provided that the results of such an examination shall be used only in accordance with the requirements of this section. Whenever a contractor inquires into an applicant's or employee's physical or mental condition or conducts a medical examination prior to employment or change in employment status information obtained in response to such inquiries or examination shall be kept confidential except that: